

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
)	
Kingsgate Telephone, Inc. Petition for Waiver of the Definition of "Study Area" in the Appendix—Glossary of Part 36)	
)	
)	

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

ETS Telephone Company, Inc. ("ETS") requests that the Federal Communications Commission ("FCC") grant a waiver of the FCC's definition of a "study area" so that it may continue to be treated as an incumbent local exchange carrier ("ILEC") for the purpose of receiving Federal Universal Service Fund ("FUSF") support for service provided near the Houston, Texas area.¹ The Public Utility Commission of Texas ("PUCT") is the state commission with regulatory authority over the areas indicated in ETS's petition. Because the "creation of a new study area has the effect of placing a new burden on the [FUSF]"² and because citizens of Texas pay assessments that fund the FUSF, the PUCT has an interest in encouraging the prudent administration of the FUSF. The PUCT does not support ETS's request and urges the FCC to deny the waiver.

Among the factors considered by the FCC when evaluating ETS's request is the position of the state commission having regulatory authority over the affected exchanges.³ ETS insinuates that the PUCT supports its present request, stating that the PUCT informed the FCC in a letter dated April 26, 1996⁴ that the PUCT has no objection to any necessary waiver to

¹ ETS Telephone Company, Inc.'s Petition, *Kingsgate Telephone, Inc. Petition for Waiver of the Definition of "Study Area" in the Appendix—Glossary of Part 36*, CC Docket No. 96-45, filed September 17, 2014 ("ETS Petition").

² *M&L Enterprises, Inc., d/b/a Skyline Telephone Company Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, Order, FCC 04-86, ¶12 (rel. April 12, 2004) ("Skyline Order").

³ *Skyline Order* at ¶10; *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, ¶265 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

⁴ A copy of the letter referenced by ETS is attached to these comments as Attachment A.

establish a study area for ETS.⁵ On the other hand, Consolidated Communications of Fort Bend Company (“Consolidated”), Windstream Corporation (“Windstream”), and CenturyLink disagree with ETS’s insinuations.⁶ Further, the FCC has previously inferred a state commission’s support for a waiver request, in part, as a result of the state commission having designated the petitioner as an eligible telecommunications carrier (“ETC”).⁷ In light of these representations by commenting parties and in light of the FCC’s precedent of inferring a state commission’s position, the PUCT files these comments in order to clarify its position with respect to ETS’s petition. Because of the concerns raised by commenters in this proceeding and because of changes in the structure of the FUSF, as indicated in the *USF/ICC Transformation Order*, the PUCT does not support ETS’s petition.

I. COMMENTS

For ETS’s service offerings near the Houston, Texas area, despite the fact that the PUCT treats ETS as a competitive carrier, ETS draws support from FUSF as though it were a rate-of-return regulated ILEC.⁸ If ETS had been treated as a competitive carrier by the FCC, as it is treated by the PUCT, ETS would have been eligible for substantially less support because its support amounts would be based on each area’s ILEC’s eligibility.⁹ ETS specifically requests that the FCC “grant all other waivers that it deem necessary for ETS to continue to receive high-cost support as an incumbent”¹⁰ Based on the concerns raised by commenters in this proceeding and discussed below, the PUCT does not support ETS’s petition. In particular, the

⁵ ETS Petition at 4.

⁶ Opposition of Consolidated Communications of Fort Bend Company, CC Docket No. 96-45, filed Oct. 22, 2014, p. 11 (“Consolidated’s Comments”); Opposition of Windstream Corporation to ETS Telephone Company, Inc. Petition for Waiver, CC Docket No. 96-45, filed Oct. 22, 2014, p. 4 (“Windstream’s Comments”); CenturyLink Opposition to ETS Telephone Company, Inc.’s Petition for Waiver, CC Docket No. 96-45, filed Oct. 22, 2014, p. 4 (“CenturyLink’s Comments”).

⁷ *Skyline Order* at 6768, ¶17. The other criteria laid out in the *Skyline Order* are that the change in study area boundaries must not adversely affect the universal service fund and that a waiver must be in the public interest. *Id.*

⁸ CC Docket No. 96-45, Order, ¶3 (rel. June 3, 2014) (“June 3, 2014 Order”); *see also* Opposition of AT&T, CC Docket No. 96-45, filed Oct. 22, 2014, p. 1 (“AT&T’s Comments”); CenturyLink’s Comments at 1; Consolidated’s Comments at 1; Windstream’s Comments at 1; Opposition of the United States Telecom Association, CC Docket No. 96-45, filed Oct. 22, 2014, p. 1.

⁹ As indicated by CenturyLink, support for competitive carriers was based on the portability of support that ILEC’s received. CenturyLink’s Comments at 7. The FCC has since ordered that support for competitive wireline carriers will be phased down and transitioned to the Connect America Fund. *USF/ICC Transformation Order* at ¶502. AT&T notes that it has never received support from the FUSF for service in areas that overlap with ETS’s service area and, therefore, ETS would never have received support under the portability rule. AT&T’s Comments at 4.

¹⁰ ETS Petition at 8.

PUCT does not support ETS's request for a waiver of a definition of a study area, which would permit ETS to continue to receive support from the FUSF on a study area basis as though it were an ILEC.

A study area is a geographic segment of an ILEC's telephone operations that generally corresponds to the ILEC's entire service territory within a state.¹¹ The FCC has held that study area boundaries are important because carriers perform jurisdictional separations at the study area level and receive support from the FUSF on a study area basis.¹² In order to prevent an ILEC from amending its study area boundaries in order to maximize its FUSF support, the FCC froze all study area boundaries effective November 15, 1984.¹³ A carrier must apply to the FCC for a waiver of the study area boundary freeze before creating new study areas or reconfiguring existing areas.¹⁴

In 1996, the FCC's Common Carrier Bureau (now known as the Wireline Competition Bureau) held that ETS would not be required to seek a waiver in order to establish a study area for the purposes of receiving support from the FUSF based on ETS's representations that it would serve entirely in unserved territories.¹⁵ However, after ETS informed the FCC—as part of a data submission necessary to implement certain universal service reforms—that its service area overlaps with the service areas of other incumbent carriers,¹⁶ the FCC ordered this year that ETS must request a study area waiver in order to continue its existing eligibility for support from the FUSF.¹⁷ On September 17, 2014, ETS filed a petition with the FCC for a study area waiver in order to continue to receive FUSF support as required by the FCC's order.¹⁸

Several commenters have expressed opposition to ETS's petition. In particular, Windstream notes that ETS has received \$42.5 million in support from the FUSF since 2003 even though ETS's service area is entirely within the service areas of ILECs that receive little or no support from the FUSF.¹⁹ AT&T states that it has never received support from the FUSF for

¹¹ *Skyline Order* at ¶10.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ June 3, 2014 Order at ¶3.

¹⁶ *Id.* at ¶6.

¹⁷ *Id.* at ¶8.

¹⁸ ETS Petition.

¹⁹ Windstream's Comments at 2. AT&T estimates that ETS has received \$46 million from the FUSF since 1998. AT&T's Comments at 10.

service in areas where AT&T's service overlaps with ETS's service areas.²⁰ CenturyLink claims that this state of affairs "violates the universal service policy of competitive neutrality" and "allow[s] ETS to receive high-cost universal service support in an area that the ILEC serves without the benefit of any universal service support."²¹ Multiple ILECs serving areas near Houston, Texas have stated that they are certificated to and willing to serve ETS's customers and that, therefore, continuing support for ETS would not further the goals of the FUSF because it would not result in an expansion of the availability of voice telephony or advanced services.²²

The FCC has previously held that the "creation of a new study area has the effect of placing a new burden on the federal universal service fund."²³ Further, the "primary objective in freezing study area boundaries was to prohibit companies from setting up high-cost exchanges within existing service territories as separate study areas to maximize high-cost support."²⁴ As such, ETS's petition implicates the foundational considerations underpinning the FCC's current policies. The PUCT urges the FCC to consider the comments filed by parties opposing ETS's petition when deciding whether to burden the FUSF by granting ETS's request.

ETS indicates in its petition that the PUCT informed the FCC in a letter dated April 26, 1996 that the PUCT had no objection at that time to any study area waiver request by ETS.²⁵ The instant proceeding involves a new petition filed in 2014 that is distinct from ETS's 1996 proceeding. While the PUCT did not oppose such a request based on the particular facts of ETS's 1996 petition, the facts and existing policies today warrant a different approach. Competition and the availability of service have dramatically expanded within ETS's service territory.²⁶ Further, the FCC's *USF/ICC Transformation Order* and other actions represent a fundamental shift in the FCC's approach to the administration of the FUSF. During the time since the PUCT's 1996 letter, the FCC has comprehensively reformed and modernized the FUSF through the establishment of the Connect America Fund, including the creation of new criteria

²⁰ AT&T's Comments at 4. AT&T and its predecessor Southwestern Bell Telephone are among the ILECs whose service areas overlap with the area that is the subject of ETS's waiver petition. *Id.*

²¹ CenturyLink's Comments at 7.

²² See, e.g., Windstream's Comments at 2; Consolidated's Comments at 9.

²³ *Skyline Order* at 12.

²⁴ *Id.*

²⁵ ETS Petition at 4.

²⁶ AT&T estimates, based on the National Broadband Map, that, in addition to the availability of voice telephony, there are multiple broadband providers in ETS's service area. AT&T's Comments at 11-12.

for determining a carrier's eligibility for support from the FUSF.²⁷ The FCC's decision to permit ETS to receive support as an ILEC and the PUCT's support for ETS, both occurring in 1996, should not prevent the evaluation of ETS's petition in light of these changes over the past 20 years.

II. CONCLUSION

Because citizens of Texas pay assessments that fund the FUSF, the PUCT has an interest in encouraging the prudent administration of the FUSF. The FCC stated that it will weigh the position of the relevant state regulatory authority when considering whether to grant a study area waiver. The PUCT submits these comments to convey that the PUCT does not support ETS's request and urges the FCC to deny the waiver request.

Respectfully submitted,

Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78711-3326

February 30
January 3, 2015



Donna L. Nelson
Chairman



Kenneth W. Anderson, Jr.
Commissioner



Brandy Marty Marquez
Commissioner

²⁷ See, generally, *USF/ICC Transformation Order*.

Attachment A



Public Utility Commission of Texas

7800 Shoal Creek Boulevard
Austin, Texas 78757-1098
512/458-0100 • (Fax) 458-8340

Pat Wood,
Chairman

Robert W.
Commissioner

Judy Wals
Commissioner

Carole J. Vogel, Director
Office of Regulatory Affairs

April 26, 1996

RECEIVED

APR 29 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: Waiver of Study Area Boundary for
Kingsgate Telephone, Inc.

Dear Mr. Caton:

This is to confirm that the Public Utility Commission of Texas has granted to Kingsgate Telephone, Inc. a certificate of operating authority to provide telecommunications services in Texas. Therefore, the Public Utility Commission of Texas has no objection to a waiver of the FCC rules, as deemed necessary by the FCC, to establish a study area for Kingsgate Telephone, Inc.

Sincerely,

Carole Vogel, Director



Printed on recycled paper

An Equal Opportunity E

POLICY DEVELOPMENT (512) 458-0306
ADMINISTRATION (512) 458-0188
CENTRAL RECORDS (512) 458-0181

EXECUTIVE DIRECTOR (512) 458-0141
PUBLIC INFORMATION (512) 458-0388
CONSUMER AFFAIRS (512) 458-0256
HUMAN RESOURCES (512) 458-0190
TTY (512) 458-0221

REGULATORY AFFAIRS (512) 45
COMMISSION SECRETARY (512) 45
INFORMATION SYSTEMS (512) 45